

# **DECISION RECORD**

## **Calico Mountain Complex Wild Horse Capture Plan Environmental Assessment DOI-BLM-NV-W030-2010-0001-EA**

### **INTRODUCTION**

The Calico Mountain Complex (Complex) consists of approximately 550,000 acres (public and private) of public lands and is located north and east of Gerlach, Nevada within Humboldt and Washoe counties. The entire gather area spans approximately 50 miles long and 35 miles wide. A portion of the area is located within the Black Rock Desert High Rock Canyon Emigrant Trails National Conservation Area (NCA). The Complex includes the following Herd Management Areas (HMAs) (refer to EA Map 1):

- ❑ Black Rock Range East
- ❑ Black Rock Range West
- ❑ Calico Mountains
- ❑ Granite Range
- ❑ Warm Springs Canyon

Wild horses from these HMAs will be gathered as a Complex or unit as herds move and interact throughout. The Complex gather involves areas beyond the HMA boundaries, as displayed in the Complex EA Maps 1-2, as wild horses have moved outside of HMAs in search of forage, water and space due to the current over-population of wild horses in this area. Burros are only found in the Warm Springs Canyon HMA and would not be gathered or removed as the current population estimate is within the established Appropriate Management Levels (AML) for burros in that HMA.

The AMLs for all HMAs in the Complex were first established through a decision making process for Final Multiple Use Decisions (FMUDs) issued by the Winnemucca District in 1993, 1994 and 2005 following completion of Allotment Evaluations to refine the land use plans allocation of forage to wild horses. The AMLs were re-affirmed for the Black Rock Range East HMA, Black Rock Range West HMA, Warm Springs Canyon HMA, and Calico Mountains HMA (Soldier Meadows Allotment portion) through FMUDs and Decision Records completed in 2000, 2003 and 2004 upon a review of additional data to determine whether changes to AML were necessary to meet thriving natural ecological balance. These AMLs were established and/or re-affirmed following the collection, analysis, and interpretation of monitoring data and through coordination with the interested public.

The AML for the HMAs within the Complex are expressed as a range, where the upper number represents the maximum population for which thriving natural ecological balance

would be maintained.<sup>1</sup> The lower range represents the number of animals that should remain in the Complex following a wild horse gather in order to reduce the frequency of gathers and keep the population from exceeding the established AML between gathers.<sup>2</sup> The AML range would also ensure a genetically viable population exists within the Complex.

The combined AML for the Complex is a range of 572-952 wild horses. However, the current population of wild horses within the Complex has been inventoried at 3,040 wild horses. The current population greatly exceeds the Complex AML at about 5.3 times the low range of the AML (572) or 3 times over the high range AML of 952. In fact, the current population of wild horses exceeds the identified carrying capacity for both livestock and wild horses combined as established in the FMUDs completed for all four allotments dated 1993, 1994, 2003, 2004 and 2005.

### **Compliance/Conformance**

I have determined that the Proposed Action is in conformance with:

*The Paradise-Denio and Sonoma-Gerlach Resource Area Management Framework Plans (MFPs) approved July 9, 1982.*

The wild horse and burro section of the Sonoma -Gerlach and Paradise-Denio RODs, July 1982, *Plan and Implementation* consists of the integration of the Proposed Actions and the Livestock Reduction/Maximizing Wild Horses and Burros Alternative with the following modifications:

4. Wild horse and burro herds will be maintained in the areas described in the Livestock Reduction/Maximizing Wild Horse and Burro Alternative. However, numbers will be determined by the following criteria: Existing/current WH&B numbers (as of July 1, 1982) will be used as a starting point for monitoring purposes except where one of the following exist:
  - a. Numbers are established by adequate and supportable resource data.
  - b. Numbers are established through the CRMP process as documented in CRMP recommendations and agreed to by the District Manager.
  - c. Numbers are established by formal signed agreement between affected interests.

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1. The AML represents "that 'optimum number' of wild horses which results in a thriving natural ecological balance and avoids a deterioration of the range." Animal Protection Institute, 109 IBLA 119 (1989).

2 If wild horses were gathered to the high end of the AML range, then after the first foaling season following the gather, the horse population would exceed AML, thereby necessitating another gather in the following year.

- d. Numbers are established through previously developed interim capture/management plans. Plans are still supportable by parties consulted in the original plan. EA's (EAR's) were prepared and are still valid.
- e. Numbers are established by court order.

The following is Wild Horse and Burro Objective 1 from the Sonoma-Gerlach MFP, 1982:

- **WHB-1:** Maintain a viable population of wild horses and burros on public lands where there was wild horse and burro use as of December 15, 1971, and achieve and maintain a thriving natural ecological balance on the forage resource.

The following is Wild Horse and Burro Objective 1 from the Paradise-Denio MFP, 1982:

- **WHB-1:** Maintain wild horses and burros on public lands, where there was wild horse or burro use as of December 15, 1971, and maintain a natural ecological balance on the public lands.

The Proposed Action is also in conformance with the July 2004 ROD for the *Black Rock Desert High Rock Canyon Emigrant Trails NCA Resource Management Plan (RMP)*. Applicable decisions are:

- **WHB-1:** Retain referenced HMAs (Black Rock Range East, Black Rock Range West, Calico Mountains, Warm Springs Canyon, and Granite Range) and manage wild horse or burro populations consistent with plan objectives.
- **WHB-3:** Contiguous HMAs with documented reproductive interaction will be managed as complexes to enable better management of genetic traits for the population and to improve coordination of monitoring and gathering.
- **WHB-5:** Horses and burros will be gathered from the HMAs to maintain horses and burros within the AML as funding permits. Aircraft will continue to be used for the management and, when necessary, removal of wild horses and burros. Gather activities will be scheduled to avoid high visitor use periods whenever possible.
- **WHB-6:** Gathers in Wilderness will continue to be conducted by herding the animals by helicopter or on horseback to temporary corrals, generally located outside of Wilderness. No landing of aircraft will occur in Wilderness Areas except for emergency purposes, and no motorized vehicles will be used in Wilderness in association with the gather operations unless such use was consistent with the minimum tool requirement for management of Wilderness.

The Proposed Action is consistent with the plans and policies of neighboring local, county, state, tribal and federal governments to the greatest extent practical. Under the Proposed Action, no federal, state, or local law, or requirement imposed for the protection of the environment will be threatened or violated.

The Proposed Action is in conformance with all applicable regulations at 43 CFR (Code of Federal Regulations) § 4700 and policies, as well with the 1971 Wild Free Roaming Horses and Burros Act. More specifically, this action is designed to remove excess wild horses consistent with the following regulation:

43 CFR § 4720.1: *“Upon examination of current information and a determination that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately...”*

## DECISION

Based on the Calico Mountain Complex Wild Horse Gather EA # DOI-BLM-NV-W030-2010-0001-EA, and the attached Finding of No Significant Impact (FONSI), it is my decision to implement the Proposed Action.

This Decision constitutes my final decision to gather and remove excess wild horses from within the Complex (includes HMAs and adjacent land within the Complex gather area) and remove wild horses from non-HMA areas to which wild horses have moved, and to manage for a thriving natural ecological balance. Pursuant to Title 43 of the Code of Federal Regulations at 4770.3(c), this decision is effective immediately and the Complex gather is approved to begin on or about December 28, 2009.

***Proposed Action:*** Remove Excess Wild Horses, Implement Fertility Control on Released Mares, and adjust Male Sex Ratio to 60%.

BLM plans to gather approximately 80% (2,432) to 90% (2,736) wild horses out of the existing wild horse population of 3,040 wild horses. If a 90% gather rate is achieved, up to 268 adult wild horses (77 treated mares and 191 studs) would be released back onto the range, and 2,432-2,468 excess wild horses would be removed from the range. The gather operation would result in a post-gather wild horse population of 572 wild horses which is the low end of the established AML and represents a genetically viable population. No burros would be gathered or removed.

The Proposed Action was developed to achieve the established AML, remove excess wild horses from the range, prevent further deterioration to the range, and ensure the long-term health of wild horses within the Complex by managing for a thriving natural ecological balance. Fertility control treatments and modification of sex ratios of released animals would slow population growth and could increase the time period before another gather was required.

All mares selected for release, including those previously treated with fertility control, would be treated/retreated with a two-year Porcine Zona Pellucida (PZP-22) or similar vaccine and released back to the range. Immuno-contraceptive treatments would be conducted in accordance with the approved standard operating and post-treatment monitoring procedures (SOPs, EA Appendix B). Mares would be selected to maintain a diverse age structure, herd characteristics and conformation.

Studs selected for release would be released to increase the post-gather sex ratio to approximately 60% studs in the remaining herds. Studs would be selected to maintain a diverse age structure, herd characteristics and conformation. In order to accomplish the post gather sex ratio, 191 studs could be released. The number of studs and mares released would be determined after analysis of the estimated number of ungathered mares and studs remaining within the Complex when compared to the low range of AML.

Due to the mountainous terrain, vegetative cover, and potential for winter storm conditions, gather efficiency may be reduced, and it may not be possible to gather 90% of the horses within these HMAs. Should an adequate portion of the population not be gathered, fertility control treatments would not be implemented, and the Proposed Action would consist of either removal only to achieve the low AML or the release of only studs to achieve the low range of AML. The ungathered wild horses would likely reflect the current ratio of approximately 50% mares and 50% studs. The release of the studs will adjust the sex ratio; with the objective of achieving a 60% stud ratio in the post gather wild horse population.

The objective for a gather is to achieve the low end of the AML range for the HMAs within the Complex. The goal is to reduce the population of the Complex to approximately 572 wild horses. This population size is sufficiently large to ensure a genetically healthy population within the Complex given the interaction between the HMA herds. Additionally, the population could remain below the upper range of the established AML (952 wild horses) for at least three to four years following the gather, or longer if fertility control and sex ratio adjustments can be made.

The following table displays current wild horse populations counted September 2009, by HMA where the horses were observed, and removal numbers needed to achieve the low range of AML during a winter 2010 gather of the Complex:

HMA	Wild Horses			Burros		
	AML Range	Current Pop.	Target Remove	AML Range	Est. Pop.	Est. Remove
Black Rock Range East	56-93	308	252	--	0	0
Black Rock Range West	56-93	627	571	--	0	0
Calico Mountains	200-333	795	595	--	0	0
Granite Range	155-258	422	267	--	0	0
Warm Spring Canyon	105-175	888	783	14-24	29	0
Total	<b>572-952</b>	<b>3,040</b>	<b>2,468</b>	<b>14-24</b>	<b>29</b>	<b>0</b>

## Public Involvement

### Preliminary EA

On October 22, 2009, the Winnemucca District issued the Preliminary Calico Mountain Complex Wild Horse Gather EA # DOI-BLM-NV-W030-2010-0001-EA to the interested public for review.

A notification of the availability for a 21 day review and comment period of the preliminary EA was sent to the interested public mailing list for the Complex. The preliminary EA was posted on BLM's website at:  
<http://www.blm.gov/nv/st/en/fo/wfo.html>.

Additionally, the Winnemucca District issued a news release notifying the general public of the availability of the document for review. The comment period was subsequently extended to November 22, 2009 (at the request of members of the interested public), providing for a full 30 day comment period. In excess of 10,000 comments were received from individuals, organizations and agencies. The vast majority of these comments were one of three form letters. Review of all comment letters were reviewed and considered and resulted in approximately 25 unique substantive comments. Substantive comments were utilized to finalize the EA as appropriate.

Although BLM's review of public comments did not indicate that substantive changes to the conclusions presented in the preliminary EA were warranted, they did lead to changes throughout the document to better explain and clarify BLM's analysis in response to comments, which resulted in a more comprehensive and complete document. As a result,

the reader should be more informed regarding the proposal and its effects. The Response to Comments table is attached to this Decision.

Comments received were organized into the following general categories:

Herd growth/animal numbers incorrect  
Concerns about wild horse impacts on sensitive resources on non-BLM managed lands  
Affected environment/monitoring data  
Concerns/effects/results of fertility control  
Outside of scope of analysis  
Viewpoint/matter of opinion  
Public perception regarding other uses in the Complex

#### *Native American Consultation*

Consultation letters were sent to the Summit Lake Paiute Tribe and the Pyramid Lake Paiute Tribe in late September 2009. Additional follow-up letters were sent to the Summit Lake Paiute Tribe in November and December of 2009 in response to Tribal comments.

Comments on the EA were received from the Summit Lake Paiute Tribe and the Pyramid Lake Paiute Tribe. The Summit Lake Paiute Tribe is concerned about damage from wild horses moving from public lands onto the Summit Lake Reservation, especially in sensitive lakeshore and riparian areas. They estimate 200-250 wild horses from adjoining BLM herd management areas have moved to within reservation boundaries and have requested that BLM remove these horses as part of the Complex gather. They also requested additional information on trap locations so they could accurately comment on possible impacts to areas of cultural, religious, and spiritual concern. The Tribe also questioned the basis for statements in the EA concerning water quality of the affected environment and expressed concern about protection for sites of spiritual and religious importance. The Pyramid Lake Paiute Tribe commented on the need to reduce wild horse numbers within the Complex and expressed support for the gather.

BLM has agreed to attempt to gather the horses from the Summit Lake Reservation, as these are wild horses that have moved from public lands onto tribal lands. BLM will coordinate with the Tribe's Natural Resource Department Director during the gather. BLM also provided more detailed maps and explanations of the cultural resource review process and clarified language in the EA to address the concerns about the assessment of water quality.

#### Consultation and Coordination in Development of Preliminary EA

On-going consultation with Resource Advisory Councils (RACs), the Nevada Department of Wildlife, U.S. Fish and Wildlife Service, livestock operators and others,

underscores the need for BLM to maintain wild horse and burro populations within AML. Consultation between the BLM, State of Nevada Commission for the Preservation of Wild Horses and the Sierra Club occurred in November 2008. These groups toured the area proposed for the gather and jointly concurred that the gather was needed based on the observed effects to rangeland resources from the over-population of wild horses. The conclusion of the group was that the gather was needed to protect the natural resources as well as the wild horses.

A Notice of Proposed Action (NOPA) was sent to Wilderness and Wilderness Study Area Interested Publics mailing list on September 17, 2009. The Friends of the Wilderness wrote in support of the Proposed Action as described in the NOPA.

A tour of the Warm Springs Use Area of the Soldier Meadows Allotment, within the Warm Springs HMA, was conducted with the RAC on July 16, 2008. During this tour, the RAC members observed first-hand some of the adverse impacts resulting from the excess number of wild horses on public lands, particularly at water sources. The RAC wrote a letter to the BLM Nevada State Director in support of the gather plan.

Issues identified in the EA at Chapter 1 were identified as a result of consultation and coordination relative to BLM's management of wild horses and burros in the planning area.

Public hearings are held annually on a state-wide basis regarding the use of helicopters and motorized vehicles to gather and transport wild horses (or burros). During these meetings, the public is given the opportunity to present new information and to voice any concerns or opinions regarding the use of these methods to gather and transport wild horses (or burros). The Nevada BLM State Office held a meeting on May 20, 2009; several written comments were entered into the record for this hearing. Specific opinions expressed or issues identified included: (1) the use of helicopters and motorized vehicles is inhumane and results in injury or death to significant numbers of wild horses and burros; (2) inventory methods using helicopters and fixed wing aircraft; (3) reported reproduction and mortality rates; (4) providing the public with pertinent information regarding gather plans at site-specific locations; (5) statistics or statements relating to impacts of helicopter driving, distances, terrain, etc. on wild burro herds; (6) studies on impacts to wild horses and burros on the use of helicopters and helicopter driving during gather. BLM reviewed its Standard Operating Procedures in response to the views and issues raised at the public meeting and determined that no changes to the SOPs were warranted.

Since 2004, BLM Nevada has gathered just over 26,000 excess wild horses from public lands. Of these, mortality has averaged only 0.5% -- which is a very low rate of mortality when handling wild animals. Another 0.6% of the animals gathered were humanely euthanized due to pre-existing non-gather related conditions and in accordance with BLM policy. This data affirms that the use of helicopters and motorized vehicles has proven to

be a safe, humane, effective and practical means for the gather and removal of excess wild horses and burros from the range. BLM also avoids gathering wild horses prior to, after and during the peak foaling season. BLM policy prohibits gathers during the six weeks that precede and follow the peak of foaling season, which typically occurs in May, depending upon climate and other factors.

## **Rationale**

Upon analyzing the impacts of the Proposed Action, and following issuance of the EA for public review, I have determined that the Proposed Action will not have a significant impact to the human environment, and that an Environmental Impact Statement is not required. Refer to the attached FONSI.

Removal of excess wild horses is necessary to achieve a thriving natural ecological balance between wild horse populations, wildlife, livestock, vegetation, and the available water as authorized under Section 3(b)(2) of the 1971 WFRHBA and section 302(b) of the Federal Land Policy and Management Act of 1976.

A gather is necessary to remove excess wild horses in order to achieve the established AMLs at which a thriving natural ecological balance can be maintained within the Complex, remove wild horses from outside of HMA boundaries,<sup>3</sup> and to prevent the range from deterioration associated with the current overpopulation of wild horses, which deterioration will continue unabated if the excess horses are not removed. Additionally, the BLM needs to remove excess wild horses from the Complex to preserve wild horse health in light of continuing drought conditions that have reduced available forage and water.

The proposed gather would:

- prevent the occurrence of wild horses suffering starvation caused by lack of forage on the winter range, and prevent emergency conditions from occurring due to limited waters;
- prevent utilization objectives established to protect vegetative health from being exceeded, and reduce the amount of use during the critical growth period for perennial grasses;
- decrease forage competition among wild horses, wildlife, and livestock resulting from excess wild horse numbers;
- contribute to improved vegetation density, increased plant vigor, seed production, seedling establishment, and forage production over current conditions by reducing grazing pressures caused by excess wild horse numbers;

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<sup>3</sup> Due to the current over-population of wild horses within the HMAs, wild horses have now moved beyond the boundaries of the HMAs as the horses seek additional forage and water.

- promote continued improvement of the vegetation resources throughout the Complex, resulting in upward trend and increased frequency of key species; and
- slow wild horse population growth through implementation of fertility control treatment and sex ratio modification which could extend the amount of time that can lapse between gathers required under the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA) to maintain AML.

Fertility control treatments and modification of sex ratios of released animals would slow population growth, reduce the number of animals needing to be removed through future gathers and potentially increase the time period before another gather was required.

Managing horses at the established AML will also maintain genetic health, long-term viability, and future reproductive success of mares within the herd. Reduced growth rates and lower population sizes would also allow for improvements to range condition, with long-term benefits to wild horse habitat quality, and would allow BLM to manage horses at a level that will ensure a thriving natural ecological balance.

The recent inventory data collected in September 2009 indicates that there are at least 2,468 excess wild horses within the Complex which need to be removed in order to achieve the established AMLs. Bringing the wild horse population back to AML will restore a thriving natural ecological balance and prevent further degradation of rangeland resources resulting from an overpopulation of wild horses. This need is based on factors including, but not limited to the following rationale:

- The current wild horse population is 3,040 animals, which equates to 2,468 wild horses in excess of the low end of the AML range and 2,088 wild horses in excess of the high end of the AML range;
- The current population of wild horses exceeds the identified carrying capacity for both livestock and wild horses combined as established or re-affirmed in 1993, 1994, 2000, 2003, 2004 and 2005 FMUDs or in Capture EA Decisions in 2000, and 2004;
- Excess wild horse numbers were identified as causal factors contributing to the non-attainment of RAC Standards for Rangeland Health in the Soldier Meadows and Paiute Meadows Allotments assessed within the 2003 Rangeland Health Assessments, with management of wild horses at AML identified as a necessary component to achieve or make significant progress in meeting rangeland health standards. Current excess numbers of wild horses are creating the same types of impact that led to non-attainment of standards in the 2003 Rangeland Health Assessments;
- Monitoring data indicates upland vegetation resources are receiving moderate to heavy utilization by wild horses particularly within the Warm Springs Canyon HMA.;
- Monitoring data indicates wild horses have caused damage to water sources and rangeland improvements;

- In addition to degradation within the HMAs, wild horses have moved outside of the Warm Springs Canyon HMA onto Tribal lands, have caused property damage to newly built fences, and are causing impacts to LCT habitat on Reservation lands. Summit Lake Paiute Tribe has contacted the BLM with concerns regarding wild horse impacts on the sensitive shores of Summit Lake through utilization and trampling, and have requested removal of these horses. According to 43 CFR § 4720.2-1, BLM is required to remove wild horses that stray onto private lands as soon as practicable after a request for removal is received;
- Water sources and winter range are limited within the Complex. With a normal or heavier than normal winter causing snow pack cover; adequate forage may not be available to support the existing population through this winter, even if the grazing permittees were to take voluntary non-use. Sporadic winter conditions such as this do not alleviate current drought status in the area, and

The Proposed Action will help limit wild horses to areas within the established HMAs, and bring the population back to AML in order to ensure a thriving natural ecological balance. This action is necessary to decrease forage competition among wild horses and wildlife, prevent deterioration of rangelands and vegetation resources and maintain the balance of multiple uses for the area as established through prior planning decisions.

The following constitutes the rationale for making this decision effective upon issuance:

a) Potential Damage to Rangeland and Riparian Resources

Population and resource monitoring data show that current wild horse populations are exceeding the range's ability to sustain wild horse use over the long-term due to excess wild horse numbers, and wild horses are now permanently residing outside the Complex as more horses compete for limited forage, space and water resources. Resource damage is occurring and will continue without immediate action. Riparian areas are receiving heavy utilization and trampling impacts. Too few watering sites are available to sustain the current wild horse population. Native perennial grasses are limited in lower elevations and throughout winter habitat due to the inherently low production potential of these ecological sites combined with drought conditions and compounded by the overpopulation of wild horses.

Continued overpopulation of wild horses will result in over utilization of remaining forage and further degradation of habitat utilized by wild horses and wildlife. The existing population of wild horses exceeds the established carrying capacity for both wild horses and livestock combined.

Adverse impacts from current wild horse populations have been observed even where grazing permittees have not utilized the full active AUMs available for livestock under their grazing permits or have voluntarily grazed no livestock within HMA areas with excess horses.

b) Potential Impacts to Animal Health

Rangeland vegetation is limited throughout the Complex due to prolonged drought in this area. At the current population of wild horses, which exceeds the established carrying capacity of public lands within the Complex, wild horse health is at risk. Under the current situation, and unless the populations of wild horses within the project area are reduced through a gather and removal of excess horses, wild horse body condition will decline through the winter.

Substantial overpopulation of wild horses above established levels in conjunction with continuing drought conditions has created the likelihood for widespread emergency conditions during severe winter weather due to lack of winter forage and limited water sources. The overpopulation of wild horses also puts horses at risk of emergency conditions during the summer months if drought conditions persist.

c) Necessity of Prompt Removal of Excess Wild Horses

Due to funding limitations during FY 2009, the excess wild horses identified through the March 2008 inventory of the Complex could not be promptly removed. This has resulted in the addition of at least another 973 wild horses following two new foaling seasons in 2008 and 2009. If the 2,468 excess wild horses are not removed this winter, by the next foaling season, BLM estimates that the population will increase from the current 3,040 wild horse population to at least 3,600 wild horses, exacerbating the deterioration in range conditions documented at the current wild horse population within the Complex.

d) The Proposed Action is in conformance with the Standards and Guidelines for Management of Wild Horses and Burros of the Sierra Front-Northwest Great Basin Area.

In accordance with 43 CFR § 4720.1, upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately.

I selected implementation of the Proposed Action over Alternative 2 for the following reason:

There is greater opportunity to decrease the annual growth rate and reduce the necessity for and frequency of future gathers.

I selected implementation of the Proposed Action over the No Action for the following reason (EA at Chapter 4 Wild Horses):

Under the No Action alternative, AML would not be achieved within the Complex and wild horses would not be removed from horse free areas outside of

the boundaries of designated HMAs including Tribal lands, which removal is mandated by the WFRHBA. There would be no active management to control the size of the population at this time, and wild horse populations would continue to increase at an average rate of 20-27% per year. A steady increase in the population size would result, and could cause long-term and potentially irreversible damage to rangeland resources. Without a gather and removal now, the wild horse population in the Complex would exceed 7,000 head within four years based on population annual growth rates.

The AML for the Complex represents the population range at which thriving natural ecological balance can be maintained and the level at which multiple uses of the public lands can occur without deterioration of the rangeland. Allowing the wild horse population to increase even further in excess of AML would result in greater competition for limited waters and forage resources among horses and with other multiple uses. Excessive utilization, trampling, and trailing by wild horses would further degrade the vegetation, prevent improvement of range that is already in less than desirable or degraded condition, would degrade currently healthy rangelands, and would not allow for sufficient availability of forage and water especially during drought years or severe winters for either wild horses or other ungulates. Winter range lacks abundant forage and is generally in poorer ecological condition in the Complex, and waters are limited. Wild horses are already congregating in high densities within portions of the Complex.

Throughout the HMAs administered by the Winnemucca District few predators exist to control wild horse or burro populations. Some mountain lion predation occurs, but does not appear to be substantial. Coyote are not prone to prey on wild horses unless young, or extremely weak. Other predators such as wolf or bear do not exist.

Wild horses are a long-lived species with documented foal survival rates exceeding 95%. Survivability rates collected through research efforts are as follows:

- Pryor Mountain Wild Horse Range, Montana: >95%; 15 years and younger, except for foals, both sexes: 93%;
- Granite Range HMA, Nevada: >95%; 15 years and younger, except for male foals: 92%;
- Garfield Flat HMA, Nevada: > 95%; 24 years and younger, except both foals, both sexes: 92%.

Wild horses are not self-regulating species and will continue to reproduce until their habitat can no longer support them. Usually the habitat is severely damaged before the wild horse population is abruptly impacted and experiences substantial death loss.

Without a gather to remove excess horses, uncontrolled increases in the wild horse population, depletion of forage and water resources and degradation of plant communities will result in decline of the body condition, and health of the wild horse population, ultimately resulting in catastrophic losses to the herd.

Significant loss of the wild horses in the Complex due to starvation or lack of water would have obvious consequences to the long-term viability of the herd. Continued decline of rangeland health and irreparable damage to vegetative, soil and riparian resources, would have obvious impacts to the future of the Complex and all other users of the resources, which depend upon them for survival. As a result, the No Action Alternative would not ensure healthy rangelands that would allow for the management of a healthy, self-sustaining wild horse population, would adversely impact other multiple uses of the public lands, and would not promote a thriving natural ecological balance.

While some members of the public have advocated “letting nature take its course,” allowing horses to die of dehydration and starvation would be inhumane and would be contrary to the WFRHBA, which mandates removal of excess wild horses. The damage to rangeland resources that results from excess numbers of wild horses is also contrary to the WFRHBA, which mandates the Bureau to “*protect the range from the deterioration associated with overpopulation*”, “*remove excess animals from the range so as to achieve appropriate management levels*”, and “*to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area*”.

Promulgated Federal Regulations at Title 43 CFR § 4700.0-6 (a) state “*Wild horses shall be managed as self- sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat*” (emphasis added).

## **AUTHORITY**

The authority for this decision is contained in Section 3(b)(2) of the 1971 Free-Roaming Wild Horses and Burros Act, Section 302(b) of the Federal Land Policy and Management Act (FLPMA) of 1976, and Code of Federal Regulations (CFR) at 43 CFR §4700.

### **§4700.0-6 Policy**

- (a) Wild horse and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat;

- (b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans;
- (c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior;
- (d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

#### §4710.4 Constraints on Management

Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.

#### §4720.1 Removal of excess animals from public lands

Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animal immediately in the following order.

- (a) Old, sick, or lame animals shall be destroyed in accordance with subpart 4730 of this title;
- (b) Additional excess animals for which an adoption demand by qualified individuals exists shall be humanely gathered and made available for private maintenance in accordance with subpart 4750 of this title; and
- (c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with subpart 4730 of this part<sup>4</sup>

#### §4740.1 Use of Motor Vehicles or Air-Craft

(a) Motor vehicles and aircraft may be used by the authorized officer in all phases of the administration of the Act, except that no motor vehicle or aircraft, other than helicopters, shall be used for the purpose of herding or chasing wild horses or burros for capture or destruction. All such use shall be conducted in a humane manner.

(b) Before using helicopters or motor vehicles in the management of wild horses or burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.

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<sup>4</sup> The Bureau of Land Management is currently not implementing this portion of the CFRs. Future decisions regarding this option would not occur before public involvement and comment.

### §4770.3 Administrative Remedies

(a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals and petitions for stay of a decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR, part 4.

(c) Notwithstanding the provisions of paragraph (a) of §4.21 of this title, the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving natural ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision.

### **APPEAL PROVISIONS**

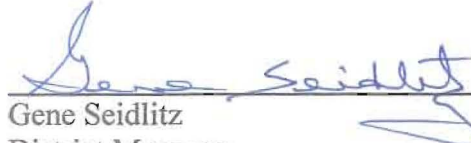
Within 30 days of receipt of this wild horse decision, you have the right to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with regulations at 43 CFR 4.4. If an appeal is taken, you must follow the procedures outlined in the enclosed, “Information on Taking Appeals to the Board of Land Appeals.” Please also provide this office with a copy of your Statement of Reasons. An appeal should be in writing and specify the reasons, clearly and concisely, as to why you think the decision is in error.

In addition, within 30 days of receipt of this decision you have a right to file a petition for a stay (suspension) of the decision together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties identified in items 2, 3, and 4 of the enclosed Form 1842-1, titled “Information on Taking Appeals to the Board of Land Appeals.” The appellant has the burden of proof to demonstrate that a stay should be granted.

A petition for a stay of decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied;
- 2) The likelihood of the appellant’s success of the merits;
- 3) The likelihood of immediate and irreparable harm if the stay is not granted; and
- 4) Whether the public interest favors granting the stay.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.401 (c) (2)).

  
\_\_\_\_\_  
Gene Seidlitz  
District Manager  
Winnemucca District

12/8/09  
\_\_\_\_\_  
Date

Attachments